IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

WP(C).No. 5509 of 2007(E)

PETITIONER:

A.P. NARAYANAN,
ASSISTANT ENGINEER, L.S.G.D. SECTION,
VAZHAKKAD GRAMA PANCHAYAT, MALAPPURAM DISTRICT.

BY ADV. SRI.M.V.BOSE
SRI.VINOD MADHAVAN
SMT.NISHA BOSE

RESPONDENTS:
---

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE CHIEF ENGINEER,
NATIONAL HIGHWAYS & P.W.D. ADMINISTATION,
THIRUVANANTHAPURAM.

3. THE CHIEF ENGINEER,
LOCAL SELF GOVERNMENT DEPARTMENT,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

= = = = = = = = = = = = = = = = =
W.P.(C) No.5509 OF 2007 E
= = = = = = = = = = = = = = = = =

Dated this the 20th February, 2007

J U D G M E N T

The petitioner was promoted to the post of Assistant Engineer on 15-9-2003. He is one among those included in the list of employees prepared by the Chief Engineer, Local Self Government Department on 11-7-2006 for deployment from P.W.D. to L.S.G.D. Ext. P2 order was passed pursuant to Govt. Order dated 5-7-2006 and 10-7-2006. The petitioner did not express his willingness for deployment to L.S.G.D. However, having regard to the inter se seniority position as existed between the Asst. Engineers in the P.W.D., the petitioner was found to be one of the juniormost persons liable to be deployed to the L.S.G.D. It was for that reason the petitioner's name was included in Ext. P2. The petitioner, however, did not join duty in the L.S.G.D. Counsel submits that the petitioner did not join duty expecting favourable orders reviewing Ext. P2 order. In fact, he made attempts to see that Ext. P2 order is reviewed and he is retained in P.W.D. itself as requested by him. One of the contentions

urged by him was that new recruits who were advised by the P.S.C. had reported for duty on 20-9-2006 and since all of them can be plainly understood to be juniors to those who were in service as on that date, those new recruits shall be deployed to the L.S.G.D. in preference to the petitioner. The petitioner filed a representation requesting the Government to consider that contention of the petitioner and to exclude him from the purview of deployment. Government considered that request as directed by this Court and has now passed Ext. P12 order rejecting the request of the petitioner. The reason stated for the rejection of the request of the petitioner as seen from Ext. P12 is that, much before the new recruits had commenced service, orders were passed deploying the petitioner to the L.S.G.D. based on the fact situation which prevailed on that date. According to the Government, once deployment order has been passed, subsequent developments cannot be made use of by a person included in the list of deployed hands to retain him in the parent department.

2. On a consideration of the various materials

available before me as produced in this writ petition and the reasons stated in Ext. P12, I feel that the stand taken by the Government is sustainable. The mere fact that the petitioner did not join duty despite Ext. P2 order passed on 11-7-2006 and during such period certain other persons had joined duty cannot be utilised for the purpose of making a request that he shall be retained in P.W.D. taking note of the subsequent events. The orders of deployment are passed considering the fact situation prevailing as on the date of the order. Relying on subsequent events it is not proper to contend for the position that the order passed before such developments or events is illegal. The writ petition is liable to be dismissed. I do so.

K.K. DENESAN
JUDGE

jan/